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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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Joint Application of

ALITALIA-LINEE AEREE ITALIANE-
S.p.A

and

KLM ROYAL DUTCH AIRLINES

and

NORTHWEST AIRLINES, INC.

Docket OST 99-5674-a

for approval of and antitrust immunity for
agreements pursuant to 49 U.S.C. § 41308
and 41309

ANSWER OF
TRANS WORLD AIRLINES, INC.

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May 20, 1999

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**ANSWER OF
TRANS WORLD AIRLINES, INC.**

By an application, dated May 11, 1999, Northwest, KLM, and Alitalia have requested approval and antitrust immunity for agreements that would add Alitalia to the existing Northwest/KLM alliance. The issue of renewal of antitrust immunity for the Northwest/KLM alliance is presently before the Department, and has not yet been decided. Moreover, Northwest has acquired voting control of Continental, an action that has been challenged by the Department of Justice under the antitrust laws. TWA hereby answers and requests that the application be dismissed without prejudice, or that the Department suspend action on the proposed application until the fundamental issues of

continued immunity for the Northwest/KIM alliance and Northwest's control of Continental are resolved. In support of its answer, TWA states as follows:

1. Under Part 303.40 of the Department's Regulations, the Department must initially determined whether an application for antitrust immunity is complete. If it is incomplete, it may issue a Notice dismissing the application without prejudice. The application is obviously incomplete in several respects. It fails to explain how the parties will share the revenue of their services, even though revenue pooling is called for in the agreement (**Alitalia/Northwest** agreement, Sec. 2.2.2.3). It provides only the most generalized discussion about how the parties will engage in joint yield management programs, jointly schedule their services, and jointly establish travel agent commissions. It fails to make any suggestion how Alitalia's services will be integrated into the existing alliance between Northwest and **KLM**. The most important deficiency, however, is the resounding silence of the Joint Application about the key fourth member of the proposed alliance – Continental Airlines.

2. Northwest has acquired voting control of Continental, and it is clear that the two carriers, despite separate corporate structures, will pursue joint strategic objectives, including joint participation in the alliance with **KLM** and Alitalia. The carriers will cooperate so closely that Continental's CEO, Gordon Bethune, called the transaction a "virtual merger," and said that Continental is now a "joined-at-the-hip partner with

Northwest.”¹ Northwest and Continental clearly contemplate the integration of Continental into the NW/KLM alliance. Northwest’s President and CEO, John Dasburg, stated that “Northwest and KLM have to work more closely with Continental before talking to additional partners, but clearly we see the formation of a global network with Continental, Northwest, and KLM at its heart.”² Similarly, Northwest’s Chairman of the Board, Gary Wilson, stated in a speech before the National Press Club on March 6, 1998 that “the combination of Northwest, Continental, KLM and Alitalia will create one of the world’s premier global airline networks.”³

3. It is important, therefore, to consider not only the present sparse submission of the applicants, but also to examine the potential restraint of trade that would exist if Northwest’s ability to operate with antitrust immunity in this alliance were combined with its control of Continental. Thus, Northwest, which already has voting control of Continental, and a strategic alliance with that carrier, will be meeting with Alitalia to agree upon fares and schedules in the U.S.-Italy market. It is beyond doubt that

¹

CO, NW CEOs: Shifting The Airline Power Structure, Business Travel News, February 23, 1998.

²

NW CEO John Dasburg Talks Service, Competition, Business Travel News, Feb. 23, 1998

Motion for Leave to File and Response of American Airlines, Inc., March 11, 1998, Docket OST 98-3341, p. 3. Both of the above-referenced articles are attached to American’s pleading.

Northwest will be advancing the interest of Continental in its discussion with Alitalia, even before Continental becomes a formal member of the alliance. Thus, even if Continental is not yet a formal member of the alliance, the joint relationship with Northwest will provide an anticompetitive bridge between Continental and Alitalia.

4. An alliance in which both Continental, either directly or indirectly, and Alitalia are partners raises serious competitive issues in the U.S.-Italy market. Alitalia and Continental are the two largest carriers between the United States and Italy.

	<u>Share of Seats</u>
Alitalia	40.9%
Continental	<u>22.1</u>
Combined Share	63.0%

Source: Ex. JA-5

The combination of Continental and Alitalia into an alliance would increase both the individual carrier and total market HHI index far above the thresholds that raise competitive issues under Department of Justice Merger Guidelines.

	<u>Alliance</u>	<u>Total Market</u>
Alitalia only	1672	245 1
With Continental	3969	4257

Source: Ex. JA-5

5. The Department should not consider approving an alliance which produces such enormous HHI increases without a thorough factual examination of how the alliance, including Continental, proposes to operate in the U.S.-Italy market. Continental and Alitalia already code share on the Newark-Rome route without antitrust immunity. The Department should not take the initial step of approving this agreement without a full understanding of the ultimate intentions of the parties with respect to the more comprehensive alliance. The Alliance partners will undoubtedly argue that the astounding HHI increases in the U.S.-Italy market are irrelevant in light of potential new entry under Open Skies. However, the Department cannot accept such claims without a factual investigation and a clearer understanding of the dynamics of the U.S.-Italy marketplace.

6. The Department should not grant antitrust immunity for this triple alliance before it reaches a final decision on the more basic question whether antitrust immunity should be renewed for the NW/KLM alliance. That proceeding, Docket 98-3341, has

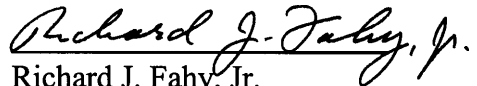
been under consideration by the Department for more than a year, and includes similar issues with respect to the impact of the strategic global alliance between Continental and Northwest on the NW/KLM alliance. For example, on February 20, 1998, American requested that, in light of the announced strategic alliance between Continental and Northwest, the Department conduct a comprehensive review of the antitrust immunity held by Northwest and KLM. The relationship between Continental and Northwest is obviously relevant to both cases, and suggests that the Department should consolidate them for fact-finding purposes and for other future steps. Otherwise, grant of immunity in this proceeding will pre-judge and make moot the proceeding on the renewal of Northwest/KIM immunity.

7. The Department probably will not hear ~~from~~ other U.S. carriers in this proceeding, notwithstanding their concerns about the anticompetitive aspects of this application. Some may be willing to trade antitrust immunity for a new route to Italy; none would not like similar scrutiny of their own immunized alliances. Nevertheless, the Department should proceed with the investigation of the need for immunity for both the basic Northwest/KIM and the potential Northwest/KLM/
Alitalia/Continental alliances. It should also in due course investigate the need for immunity for all other Alliances. As TWA demonstrated in the White Paper submitted to the Department last December, the adverse consequences of immunity in transatlantic

gateway markets outweighs the limited benefits in beyond markets, and alliances have had adverse effect on U.S. carrier market share of transatlantic traffic.

Wherefore, TWA respectfully requests that the application be dismissed without prejudice, or that, in the alternative, the Department suspend action on it until the fundamental issues of continued immunity for the NW/KLM alliance and Northwest's control of Continental are decided.

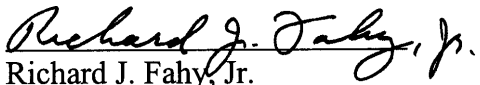
Respectfully submitted,


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May 20, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served a copy of the foregoing document upon all persons named on the attached service list by causing copies thereof, postage prepaid, to be mailed to each of them.


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